

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

HAMAN, INC. d/b/a KNIGHTS INN,	)	
	)	
Plaintiff,	)	
	)	
	)	Civil Action File No.
	)	<u>2:18-CV-01534-KOB</u>
v.	)	
	)	
CHUBB CUSTOM INSURANCE	)	<b><u>OPPOSED</u></b>
COMPANY,	)	
	)	
Defendant.	)	

**DEFENDANT CHUBB CUSTOM INSURANCE COMPANY’S MOTION  
TO STRIKE PLAINTIFF’S DAMAGES CALCULATION AND  
ALL CLAIMS ARISING OUT OF IT**

Defendant Chubb Custom Insurance Company (“Chubb”) moves to strike plaintiff Haman, Inc. d/b/a Knights Inn’s (“Haman’s”) Damages Calculation [Doc. 167] and all claims arising out of it. As grounds for this motion, Chubb respectfully showing the Court as follows:

On June 21, 2021, Haman filed Plaintiff’s Damages Calculation [Doc. 167] listing damages in the amount of the alleged replacement cost of all three buildings on its property at 2021 prices. Haman is not entitled to recover the replacement cost of the damages because the parties stipulated in the pre-trial order that Haman did not repair or replace the damaged property and the Chubb policy states unambiguously that it will not pay replacement cost unless the damaged property is

replaced. This Court should strike Plaintiff's Damages Calculation because it improperly seeks to recover the replacement cost of property Haman admits it never repaired or replaced.

Further, under this Court's pretrial order, this case involves damage to one building only – the Studio Inn – that was damaged by a fire in 2014. [Doc. 166]. Plaintiff's Damages Calculation for the Knights Inn building and Office building lists damages to those buildings that are not connected to the fire, but instead, are damages that Haman previously claimed resulted from a 2014 wind event, such as damaged roofs and interior water damage allegedly rendering those buildings uninhabitable. This Court entered summary judgment in favor of Chubb on the wind damage claim. [Docs. 158, 159]. Because it is undisputed the 2014 fire did not cause any physical loss of or damage to the Knights Inn building or the Office building, Haman may not recover damages for loss of use of those two buildings.

In addition, Haman never made a claim for business interruption coverage, never provided a sworn proof of loss for lost business income, never sued Chubb for failing to pay a business interruption claim, never provided a computation of its damages for business interruption, never provided any documents in discovery connected with a business income loss claim, and therefore, Haman cannot amend its allegations on the eve of trial to allege a claim for disruption of its hotel business.

Haman's calculation of prejudgment interest is highly improper and should not be allowed. Haman seeks interest at 6% on damages calculated at 2021 replacement cost prices, yet in 2014 (or at any time) Chubb did not owe Haman replacement cost at 2021 prices. Moreover, assessing interest on damages suffered in 2014 calculated at 2021 prices to account for cost increases would be duplicative and improper.

For all of these reasons or any one of them, this Court should enter an order striking Plaintiff's Damages Calculation and all claims arising out of it and precluding Haman's attorneys and witnesses from referring to the damage amounts contained therein. In support of this motion, Chubb relies upon the following:

- \* Exhibit 1 to this motion - Notice of Dangerous Building Designation and Order to Cease and Desist Further Occupancy of 1121 9<sup>th</sup> Avenue SW dba Knights Inn;
- \* Exhibit 2 to this motion - Plaintiff's Response to Chubb's First Interrogatories;
- \* Exhibit 3 to this motion – Plaintiff's Rule 26(a)(1) Initial Disclosures;
- \* Exhibit 4 to this motion – Chubb's First Interrogatories to Plaintiff; and
- \* Chubb's memorandum of law in support of its Rule 56(f) motion for judgment or to strike plaintiff's damages calculation and all claims arising from it, filed contemporaneously with this motion.

WHEREFORE, Chubb Custom Insurance Company respectfully requests that this Court grant Chubb's motion and enter an order striking Plaintiff's Damages Calculation in its entirety and preclude Haman, its attorneys and witnesses from referring to the categories and amounts of damages contained therein.

Respectfully submitted this 25th day of June, 2021.

/s/ Wayne D. Taylor

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This 25th day of June, 2021.

*/s/ Wayne D. Taylor*

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